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MULTIPLE MEANINGS OF PROPERTY AS TERRITORY: FORESTS, PATENTS AND BODIES

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ABSTRACT:

The term territory has multiple meanings. In this article, we use three different contexts of social and ecological contestation as examples and apply the prism of territory and territoriality to open novel ways to explore property rights. First, we use the conceptualization of territory that is the most conventional for many theoretical and practical purposes: a two-dimensional piece of the earth's surface. More specifically, we focus on the ownership of forests. Second, we explore another kind of property, self-ownership, through an analysis of feminist and other struggles that define body as territory. Third, we use the concept of territory in analyzing intellectual property rights, especially patents. We argue that territory and territoriality can have an analytically and politically meaningful use that, while connecting the concept of property rights in these different contexts, helps to uncover some of the ways through which mechanisms of capitalist rule are established. In particular, considering self-control of the body as a territorial claim can help understand how the drive toward privatization of territories in the form of land or knowledge is at least partially based on misleading arguments.

KEYWORDS:

body; forest; patent; property; territory

1 INTRODUCTION

The term territory has multiple meanings. The proliferation of spatial metaphors, especially since the so called spatial turn in some human sciences during the 1980s, led to a situation in which it may have seemed that almost everything could be at least metaphorically called a territory or a field (see Teivainen 2000; Bryen 2012). At the time, David Slater (1989) talked about a "mystique of spatiality", that tended to blur social and political analysis. Even the frameworks of analysis themselves, or scientific disciplines, could be regarded as territories that have gatekeepers and field boundaries.

In this article, we will briefly explore three different

contexts of social and ecological contestation in which the concept of property takes different forms. We will show that the territory and territoriality can have an analytically and politically meaningful use that connects these contexts. In this sense, we hope to contribute to conceptual clarity in the often-ambiguous ways the term territory is used (Brighenti 2006). Our main goal, however, is to open novel ways to explore property rights. Being one of the key sites of power in the capitalist world, property is sometimes seen as a fixed thing with clear boundaries. We argue that combining an analysis of the traditional understanding of property as territory, the land, with two less conventional forms of territory, bodies and patents, we can make visible some of the more general workings of power based on capitalist ownership and the power struggles related to the boundaries that are characteristic of the concept of property.

To develop our argument, we will refer to three Peruvian cases with three different dimensions of territory, and with three distinct connections to property. We frame our cases as instances of the expanding but contested development in a world-ecology that entwines forests, bodies and knowledge as sources of commodities. This has become an increasingly heated issue, for example in Latin American debates about what many scholars call extractivism. We hope that our project that explores the property-territory nexus can also participate in bringing new insights into the extractivism debates. A more detailed elaboration of these cases will take place in future contributions of our shared project that explores the territory-property nexus.

First, we focus on the traditional concept of territory by using forests as example. We ask when and how natural resources from forests become something that can be claimed as property – and what are the territorial aspects of this process. We unfold the kinds of bundles of property rights that are used for drawing boundaries to define ownership of forest. Second, we explore a different concept of territory, often considered more metaphorical, through an analysis of body as territory. In many ways, this is the most intimate dimension of territoriality. Is there a territorial claim to one's body? And what kinds of self-ownership claims are implicit and explicit in the claim that my body is my territory? We will analyze phenomena related to sexual self-determination but will also touch upon ownership rights to one's

body in debates about recreational drug consumption. Third, we will use the concept of territory in analyzing intellectual property rights, especially patents. Is it useful to regard the area demarcated by intellectual property rights as territory? We will refer to examples related to territorialized knowledge, cultural appropriation, and biopiracy.

In this paper, we do not aim to assess the overall desirability of different ways to arrange property and territory, and neither do we claim that all territory could or should be conceptualized as property. We do, however, suggest that most, and possibly all, forms of property can be meaningfully conceptualized as territory. In the following sections, we will suggest why and how the terminology of territory can be useful for uncovering some of the ways through which powerful systems of rule related to property and ownership are established.

2 TERRITORY AS PROPERTY AS TERRITORY

Even if territory and property are concepts with fundamental social importance, the relation between them has been surprisingly little explored. While this relation is essentially between access and exclusion, Blomley (2016) suggests that it is far from being a necessary condition. He emphasizes the contingent aspects of the property-territory nexus by pointing out that property is not equally and necessarily territorialized in all cultural contexts. Drawing various kinds of insights from Blomley's thinking, we nevertheless suggest that in most, and arguably all, situations property is in some sense territorialized.

In a narrow sense, territory refers to a land area that can be reduced to a two-dimensional map representation of the earth's surface. This is also the most basic (albeit utterly incomplete) assumption about territory shared by various scientific fields, including ecology, geography, law and many other social sciences (Brighenti 2006; 2010). As Brighenti (2006, p. 67) says, it is typical that only the most "visible" territories are recognized as such. These kinds of territories are often claimed by someone as property, even if there are various forms of public or collective or common ownership of land that may avoid the language of ownership and property. These territories are "visible" not because of their physical features, however, but because of their institutionalized nature (Brighenti 2006). Territorial claims are also made in other contexts, such as in feminist slogans that declare: my body is my territory. We will argue that intellectual property may also be meaningfully conceived as territory.

In modern capitalism, land as territorialized property very rarely concedes absolute ownership to one owner. Rather, multiple rights typically overlap in space (cf. rights to below-ground minerals, above-ground forest, and air-space typically have different 'owners') and also forms of property other than what is habitually called "private" property persist (e.g. public and common property). Therefore, spatiality is not a straightforward feature in territoriality. We argue that this same phenomenon

can be seen in the case of other property than land, e.g. in relation to our bodies seen through the concept of territory and self-ownership, and also intellectual property. All of these different kinds of property claims can have legal implications, even if the legal mechanisms of establishing ownership rights to one's own body are different from those that establish forest ownership or ownership of intellectual property.

Defining and enforcing property rights is essential in capitalism, and we mainly focus on the capitalist concept of property, i.e. how ownership is established with exclusive property rights that can be considered "private". In standard economics, property becomes effective only when there is someone, conventionally the state, who has the power to recognize and enforce – formalize it (Blomley 2016, p. 76). This may be seen analogical to what Brighenti (2006) calls "territorial respect" that is "primarily focused on the other and her ownership". Our illustrating examples are from Peru where territories of property manifest in the context of an advancing model of capitalism articulated through a powerful formalization discourse, as exemplified by the ideas of the Peruvian economist Hernando de Soto (2000, for examples of this in Peru see Salo et al. 2013; 2016).

In the following section, we show examples of how property is essentially conceptualized as something embodied in land as property, and how a similar kind of exclusion and demarcation can be seen in other territories of property.

3 MULTIPLE MEANINGS OF PROPERTY AS TERRITORY

The Peruvian state, as most states, has placed much attention on the control of natural resources. The Peruvian constitution of 1979 stated that all natural resources are part of the national wealth. This was reiterated by the 1993 constitution and confirmed by the Organic Law on Sustainable Utilization of Natural Resources in 1997, further specifying that all natural resources belong to the state. Despite belonging to the state, however, they are not necessarily property of the state (Huapaya Tapia 2014). In the classical sense of property, the rights of ownership should be transferable, at least under some conditions. According to the Peruvian constitution, natural resources are part of national wealth and permanently belong to the public domain. The state, then, is their sovereign administrator. The bundle of rights is open for transfers only when these resources are removed from their source location, making them into goods, after which they may become commodities (and someone's property).

All rural land in Peru has been classified in relation to its "major use capacity" meaning the kind of land use that is considered most suitable for each particular piece of land. Peruvian legislation considers forests a natural resource, and therefore those areas classified as best suited for forest use have been excluded from becoming property of individuals, firms or other such collective entities. This no one's (or everyone's) land actually harbors the vast majority of all land in Peruvian Amazonia. A diversity

of property rights arrangements, perhaps consequently, flourishes, and multiple territorial claims overlap, many of them simultaneously backed by the state.

Spatially, one standard prerequisite for propertizing territory is that demarcation can be effectively and unequivocally performed. The Amazonian terrain has challenged this not only because of difficult physical accessibility but also because it is highly dynamic in space and time (Pärssinen et al. 1996). Where and how the physical limits of territory should be fixed when physical landmarks, such as rivers, are bound to shift in space rather unpredictably over time? Technological changes in tools of territorial demarcation have partially overcome this problem. With geolocation devices that connect to satellites, geographic coordinates can now easily be used to establish the boundaries of a piece of forest land, independent of e.g. shifting rivers. As a consequence, perhaps paradoxically, land has become detached from its biophysical characteristics, these having to be reattached to each piece of land through technical scientific procedures, often repeatedly.

As part of this phenomenon, natural resources increasingly give rise to rights claims to intellectual property. In particular, the implementation of the Convention on Biological Diversity since the mid 1990s (and later, in 2010, the Nagoya Protocol) made local ecological knowledge jointly with genetic material from e.g. medicinal plants an issue of territorial claims to combinations of knowledge and biological matter. National governments and local communities, both from their own perspectives, have rushed to protect this bio-intellectual property against “bio-piracy” (Dutfield 2017).

On the other hand, the protection of knowledge-based commodities as intellectual property is sometimes questioned by activists under such slogans as ‘sharing is good’ (*compartir es bueno*) (Casas Cortés 2014). Patenting biological matter and associated knowledge as demarcated territories of intellectual property would seem to go against the spirit of ‘sharing is good’, and instead go in line with the defense of benefits arising from commercial applications of traditional knowledge. Hence, is all sharing good, after all? Or, conversely, does territorialization of intellectual property defend traditional knowledge, not only against biopiracy but also vis-à-vis different forms of cultural appropriation? Dutfield (2017) holds the position that rights to land are key in this, not rights to intellectual property.

These cases illustrate how knowledge, natural resources, state, and territory intertwine in ways that challenge the definitions and demarcations of property. Territory is clearly also a question of political autonomy and cultural survival. But do all these kinds of political claims depend on formalization as property and thereby as territory? The multiple emerging rights and the arrangements that enable them also have to respond to territorial claims with openly political nature, most importantly those of the indigenous groups and their organizations, but also of feminist struggles.

During the latter half of the 1990s, the government of Alberto Fujimori implemented a National Population

Programme, as a part of which up to 300,000 Peruvians, mostly women, were sterilized, many of them unwillingly (Brown and Tucker 2017). This was clearly a human rights violation with a territorial dimension. Feminist slogan declares: my body is my territory. Boundaries to personal sphere form a context to a territorial claim to one’s body. Seen as an example of the property-territory nexus this also raises the question of transferability. Human rights are not transferable but is there something transferable in the bundle of rights in self-ownership? One possible implication of such transferability would be the possibility to sell oneself to some other entity as a slave. As this possibility is generally denied in most traditions of contemporary moral reasoning, the status of self-ownership tends to differ from other forms of property.

Self-ownership of one’s body is also one possible route to understanding Peruvian legal rules about mind-altering substances. Following the tradition of “personal dose”, possession of minor amounts of the most common recreational drugs such as cannabis or cocaine is not punishable by law in Peru, and similarly debated for example in Colombia as part of everyone’s right to “free personal development” as declared by the country’s constitution of 1991. The use of various traditional mind-altering substances such as ayahuasca is also legally permitted, even if the justifications often refer to tradition rather than individualistic conceptions of self-ownership. Recreational drug consumption and culturally important traditions such as those related to ayahuasca rituals also merge, often resulting in situations described as cultural appropriation (Fatiou 2016). In any case, as pressures for less prohibitive drug policy regimes are strengthening in Latin America, we believe that the prism of ownership claims adds to our understanding of the process.

4 BOUNDARIES IN TERRITORIES OF PROPERTY

Andrea Brighenti (2006) emphasizes that territoriality is about drawing boundaries and a territory is a selectively exclusive conceptual tool: it works to exclude some or all other ‘conspecifics’ (i.e. individuals of the same ‘species’) but other ‘species’ can freely transit across a territory. As Brighenti points out, this can also refer to e.g. individuals of a given sex/gender. This comes from the ethological conceptualization of territoriality but has been also applied beyond its original context. Brighenti (2006, pp. 75–76) says that “territory plays the fundamental function of naturalizing the ownership of a given object”, bridging the figures of “possession and ownership” (emphasis in original).

Even if Brighenti (2006) does not directly explore the possibility of considering intellectual property such as patents as territory, some of his observations point to this possibility. In his analysis of the difference between winemakers in the United States and France, he focuses on the fact that the French rely on the legal tool of *appellation d’origine*, linked to the regional territory where the wine is produced (Brighenti 2006, pp. 74–75). He points out that the US reliance on the brand

rather than the land as a basis for defining the wine is not necessarily less territorial. Our conclusion is that if the brand can also be considered a territory, the same can be said about various forms of intellectual property, including patents.

5 PRIVATIZATION OF TERRITORY

We have defended the claim that various forms of property can be meaningfully conceptualized as territory. Struggles around its control are often waged in favor or against the desirability of privatization. The concept of privatization is often considered a key aspect of advancing capitalist social relations through which natural resources or knowledge become commodities that can be sold. Selling and buying is typically assumed to take place in a market, even if the really-existing capitalism has many elements that deviate significantly from a market economy (see Ylönen 2018; Ylönen and Teivainen 2018). In practice, privatization typically refers to a transaction in which something that was previously either state-owned or otherwise within a sphere characterized as public or common becomes property of individuals or non-state entities that use it as commodity.

No matter how powerful the formalization discourse has been in Peru, the word privatization has been sparingly used. Particularly, when forest land as such cannot be commodified as property, the attention has been shifted to such ecological entities that can. Goods such as timber have certainly been removed from their source, but also services such as carbon storage in biomass have been launched as commodities. This kind of de- and re-territorialization (see Brighenti 2006) of ecological entities as property could find resemblance in what Sundell and Teivainen (2017) call fuzzy privatization. Key is transferability – the possibility of the owner to engage in transactions using the property as an asset. The term privatization relies on an imagery in which collective or common resources or knowledge become property of private individuals. Ideologically, its legitimacy is reinforced by the liberal idea that individuals should control their own destinies, instead of a collective deciding on their behalf, from above. This justification, however, becomes complicated if the new owners are also collective entities, such as capitalist corporations. This, in fact, is what typically happens in Peru, as well as in many other parts of the world.

If privatization is supposed to mean private control by individuals, the feminist slogan “my body, my territory” might be a better candidate for true privatization than the transfer of resources or knowledge to business corporations. To the extent that transactions in which the body over which the individual gains control would be sold to some other entity are considered illegal or illegitimate, this kind of privatization is not capitalist. In this sense, the feminist claim to self-ownership of the body can help subvert some of the key assumptions that legitimize capitalist appropriation of territories.

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